



EXHIBIT 6
DATE 1.25.07
January 25, 2007
HB 257

Representative, Bob Lake
Chair House Taxation Committee
House of Representatives
State of Montana

Re: Comments on House Bill 257

Dear Mr. Lake,

Thank you for introducing HB 257.

I am a CPA licensed to practice in the State of Montana and Chair of the State Taxation Committee of the Montana Society of Certified Public Accountants.

I write the following testimony both personally and for the MSCPAs' in support of this bill for the following reasons:

1. The intent of the bill is to create a level playing field during the administrative process between taxpayers and the State of Montana regarding all of the various taxes administered by the Department of Revenue including income, payroll, excise, corporation license and/or income and natural resource taxes.
2. The bill is intended to apply to all types of taxpayers that report all of the various taxes administered by the Montana Department of Revenue and the State Tax Appeals Board. The various taxpayers covered include individuals, corporations, partnerships, limited liability companies, trusts and non-profit corporations and associations.
3. A level playing field means that if either the taxpayer or the government fails to comply with existing law and/or administrative rules, then either party is subject to the same consequences. If a taxpayer misses a deadline in filing a return or an appeal, then they are subject to penalties, interest and a loss of certain rights, including appeals, at the present time. If the State misses a deadline at the present time, then there is no equal consequence to the State or equivalent remedy for taxpayers.
4. I have heard comments from the Department of Revenue regarding the proposed bill. One of the comments included the limitation that could possibly result regarding collection agreements with taxpayers. The intent of this bill is to not limit anyone's ability to reach a settlement agreement after a tax liability is correctly established nor limit a taxpayer

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and/or the Department of Revenue to utilize existing laws and administrative rules regarding agreements on tax payments, penalties and interest. Therefore, if it is deemed to cause confusion in the proposed bill, then the term "collection" could be dropped from the header of the bill and in new section 15-1-222 (3).

5. If a taxpayer unfortunately has unequal treatment in the administrative process by the Department of Revenue or the State Tax Appeals Board with the law and administrative rules, then the remedy available to taxpayers is to file a lawsuit. A large majority of taxpayers in Montana will assess the cost of filing a lawsuit vs. the tax liability. Unless the tax liability exceeds the potential cost, then most taxpayers will forego the courts and pay the tax. The result of this state of affairs is a concept that I call "taxation through intimidation".
6. "Taxation through intimidation" is a strong use of words. An explanation is owed regarding this concept. Taxation through intimidation can take many forms from the innocent to the extreme. Innocent taxation through intimidation being defined as when both a taxpayer and the State unknowingly develop a tax invoice. An example of the innocent type of taxation through intimidation occurs when a taxpayer dies with a surviving spouse and estimated tax payments are coded to the deceased taxpayer's account. The State sends a tax due billing to the surviving spouse and the survivor pays the tax bill without realizing the circumstances. A lot of citizens of the State of Montana are intimidated just by receiving a bill from the Department of Revenue. I have discussed this with numerous taxpayers over the course of 30 + years of preparing tax returns; this is commonplace. The extreme form of taxation through intimidation is exemplified through the State Tax Appeals cases cited below in number 8.
7. The State of Montana has a responsibility to provide taxpayers of any means equal access to the appeals and the courts. There is no public defender function available to taxpayers in the courts for tax controversies. Equal rights to all taxpayers would reduce the inequity.
8. The State Tax Appeals Board in two different appeal cases reached different conclusions regarding a Department of Revenue Director's failure to comply with Montana statutes on rendering decisions. The published decision in favor of the taxpayer dated October 24, 2003 by the State Tax Appeals Board in Kenneth & Laura Bender vs. The Department of Revenue of the State of Montana states at page 9, "Therefore, it is the conclusion of this Board that, if the DOR does not follow the statutorily prescribed procedure for making an assessment, then no assessment has been made". Docket No. : IT-2003-1. The published decision in favor of the State dated July 13, 1999 of the State Tax Appeals Board in Gallagher, Inc. vs. The Department of Revenue of the State of Montana reached an opposite conclusion when the Director of the Department of Revenue failed to comply with the law. Docket No. : CT-1998-5. The conclusion at page 30 of the decision states that "The statute does not provide an abatement of the assessment upon failure by the Director to comply, however". The result of the latter decision indicates- in my opinion- that there are two sets of rules- one for the taxpayers and one for the State of Montana. Furthermore, if one reviews these two STAB decisions together, then the results appear

arbitrary and discriminatory. The taxpayers in Bender were individuals and the taxpayer in Gallagher was a corporation.

9. The concept of equal treatment of all taxpayer's including individuals and corporations is a part of the establishment of equal rights and equal protection. The intent of the proposed bill is to require that all taxpayers receive similar treatment under the law, equal redress of wrongs, and that any distinction between taxpayers have a valid relevance to purpose for which classification is made. Finally, any difference in treatments between taxpayers due to classification should not be arbitrary.

Since the bill was introduced I have heard comments regarding the bill. The testimony you receive on the bill may suggest changes to the bill or disagreement with the bill. I hope that a thorough discussion and debate on the merits of the bill takes place. The issue of taxation through intimidation is a serious matter and should not be taken lightly. Fair administration of taxes should be the watchword.

Thank you for allowing this testimony into the record.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter J. Kero". The signature is fluid and cursive, with the first name "Walter" being more prominent and the last name "Kero" following in a similar style.

Walter J. Kero, CPA
Chair State Taxation Committee
Montana Society of Certified Public Accountants